

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

FO Docket No. 92-306

SEP 10 PM '92

DISPATCHED BY

In the Matter of

Amendment of Part 13 of the Rules
to Privatize the Administration of
Examinations for Commercial Radio
Operator Licenses and to Clarify
Certain Rules

NOTICE OF PROPOSED RULE MAKING

Adopted: August 21, 1992; Released: September 8, 1992

Comment Date: November 2, 1992

Reply Comment Date: November 17, 1992

By the Commission:

I. INTRODUCTION

1. This *Notice of Proposed Rule Making (Notice)* proposes to amend the Commercial Radio Operator Rules, 47 C.F.R. Part 13, to privatize the examination of applicants for commercial radio licenses, and to clarify certain radio operator rules.

II. BACKGROUND AND DISCUSSION

2. In September 1986, the Commission released a *Notice of Inquiry*¹ (NOI) seeking comments on whether the public interest would be served by allowing a private organization to draft and administer all FCC commercial radio operator examinations.² As a result of that proceeding, the Commission sought and obtained an amendment to the Communications Act (*see* Federal Communications Commission Authorization Act of 1990, Pub. L. 101-396, 104 Stat 848; adopted September 28, 1990) authorizing it to delegate the examination of commercial radio operators to a private entity or entities. 47 U.S.C. §154(f)(5).³

3. We are now proposing to amend our Rules to implement that provision, and we are requesting public comments on the proposed rules. Commenters should specifically address such issues as (1) the criteria to be used by the Commission to select the examining entity or entities; (2) the regulatory or operating constraints to be placed on the examining entity or entities, including measures to prevent or avoid potential conflict-of-interest situations; (3) the level of control or supervision that should be exercised by the Commission; (4) the amount and reasonableness of fees to be charged by the private entity or entities for the administering of radio operator examinations; (5) the minimum number and geographic location of examination sites necessary to conduct the examinations; and (6) the capability of the private entity or entities to design and administer examinations for all

classes of radio operator licenses. Organizations interested in potentially becoming examiners should also provide estimates of anticipated or projected expenses and costs for administering such examinations.

4. The Commission continues to face resource constraints that prevent it from drafting and revising commercial radio operator examinations often enough to ensure examination integrity and from administering the examinations more than twice a year. Presently, the examinations are administered by local FCC offices at limited sites. Moreover, a review of the licensing process disclosed that many applicants for commercial radio operator licenses were not required by the Commission to have a license for the work they intended to perform. Available information indicated that many employers impose a license requirement as a condition of employment because it represents to them an indicator of job competency. In a 1984 *Report and Order*,⁴ the Commission eliminated rules that only permitted licensed commercial radio operators to perform transmitter maintenance, adjustments and servicing in the Private Land Mobile, Private Operational-Fixed Microwave, and Personal Radio Services. The Commission reasoned that in those services it should be the station licensees who should be ultimately responsible for ensuring the qualifications and training of their personnel. Nevertheless, the demand for commercial radio operator licenses continues and we believe that turning the examination function over to the private sector will result in more updated and relevant competency determinations to hold such licenses.

5. Currently, the Commission has seven types of commercial radio operator licenses and two types of endorsements.⁵ A new class of license, the Global Maritime Distress and Safety System Radio Operator's License (GMDSS), has recently been created, and is expected to be issued beginning in September 1992.⁶ The GMDSS license will be a five-year term license. Four of the other classes of commercial radio operator licenses are also five-year term licenses, and two classes of licenses are valid for the lifetime of the holder.⁷ At present, five-year licenses may be renewed without re-examination anytime during the last year of the license term up to five years after expiration of the license.

6. In May 1990, the Commission, pursuant to statute, began charging a fee for processing almost all commercial radio operator license applications.⁸ The \$35.00 fee was established by Congress. *See* 47 U.S.C. §158(g). That amount had been determined to be the minimum fee to ensure that the costs of collecting the fee did not exceed the potential necessary revenues derived from the fee assessment. Although the fee amount was set at the minimum necessary to reflect current Commission costs for administering the examinations, the establishment of the fee does not permit the Commission to increase the frequency of examinations or their site availability. The statutory fees collected by the FCC for the administration of examinations are deposited into the General Fund of the U.S. Treasury, and do not augment the agency's appropriation in any way.

7. Approximately 4,400 new and 600 duplicate and/or replacement General Radiotelephone Operator Licenses (GROLs) are issued each year by the Commission. The Field Operations Bureau's Radio Operator Branch staff has issued approximately 900 new, duplicate and/or replacement radiotelegraph licenses each year. Additionally, approximately 3,200 marine radio operator permits and a

combined total of approximately 100 Six-Months Service Endorsements and Ship Radar Endorsements are issued annually.

8. The recent adoption of the GMDSS Radio Operator's License will lead to an increase in the total number of applications for radio operator licenses. All applicants for this license will be required to successfully complete an examination. Applications for examination and issuance of the new GMDSS class of radio operators are therefore expected to add resource burdens to the Commission's license issuance process. Examination for the GMDSS radio operator license would also be handled by the private examiner or examiners eventually selected.

9. Privatization of commercial radio operator examinations will require changes in our current processes for issuing licenses. Since local offices will no longer administer examinations, there will be no need to have a fragmented license-issuance process by FCC local offices. The operation will therefore be shifted to one central location, and will be more efficient and economical.

10. Finally, we are proposing some "housekeeping changes" to our Part 13 Rules primarily intended to clarify application procedures and eligibility criteria. Section 13.12(b)(3) of the Rules is amended to clarify who may sign certifying statements.⁹ A change to Section 13.74 clarifies posting requirements when the original license has been submitted to the Commission as part of an application process.

III. CONCLUSION

11. Due to budgetary constraints, the Commission can presently offer commercial radio operator examinations only twice each year at twenty-five (25) local offices. Many major population areas do not have FCC offices. Therefore, many applicants must travel great distances to sit for commercial radio operator examinations. That is done at considerable expense to those applicants who incur travel and hotel expenses. Private examiners, hopefully, will be able to offer more frequent examinations in much more diverse and accessible locations. Moreover, private examiners may be able to provide examinations on demand by charging an additional fee to applicants for providing that special service. The Commission will be able to streamline the issuance of licenses by centralizing the process.

12. Therefore, the Commission seeks comments on how the entity or entities should be selected to administer the commercial radio operator examinations. Comments from potential private contractors, including the private sector and organizations such as associations, universities, colleges or other testing facilities are invited. As indicated above, commenters are urged to address the selection criteria which should be applied by the Commission; whether there should be one or more examining entities; the type and extent of control and supervision the Commission should impose on the examiners and the examination process; and the number of geographic locations of examination sites.

13. The other rule changes we are proposing in this Notice, such as limiting the category of officials signing a certification statement for purposes of granting an endorsement under Section 13.12(b) of the Rules or addressing license posting requirements, are primarily administrative processing clarifications. Currently, the Commission receives applications for Six-Months Service Endorsements accompanied by certification statements signed by ship

company officials and personnel. Section 13.12(b)(3) allows applicants for the Endorsement to demonstrate satisfactory service by submission of statements signed by "ship station licensees, masters or commanding officers of U.S. ships . . ." ¹⁰ Often the statements received are signed by personnel staff and other ship company staff who have no direct knowledge of the applicant's service. The Commission must then write for additional or clarifying information. That slows down the licensing process. Therefore, changes have been made to Section 13.12(b) which are intended to clarify who may sign certification statements. The additional proposed changes, are intended to further clarify application requirements, eligibility criteria, or licensing procedures.

IV. PROCEDURAL MATTERS

14. Initial Regulatory Flexibility Analysis

Reason for Action: This Rule Making proceeding is initiated to obtain comments concerning proposed rule changes to Part 13 of the Commission's Rules regarding the privatization of commercial operator license examinations and the clarification of other Part 13 Rules.

Objectives: The Commission seeks to promote excellence and efficiency in the licensing of commercial radio operators by increasing the availability, effectiveness and competency of commercial radio operator examinations and reducing government expenses.

Legal Basis: The proposed action is authorized under Sections 4(f)(5), (i) and (j), 301, 303(l) and (r), and 318 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(f)(5), (i) and (j), 301, 303(l) and (r), and 318.

Reporting, Recordkeeping and Other Compliance Requirements: None.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

Description, Potential Impact, and Number of Small Entities Involved: Any rule changes adopted as a result of this proceeding may affect various small entities that may become or apply to become examiners for Commission commercial radio operator licensing purposes.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: The Notice solicits comments dealing with and addressing a variety of alternatives regarding the proposed action.

15. **Ex-Parte Rules - Non-Restricted Proceeding.** This is a non-restricted notice and comment rule making proceeding. Ex-parte presentations are permitted except during the Sunshine Agenda periods, provided they are disclosed as required by Commission Rules. See generally 47 C.F.R. § 1.1202, 1.1203, and 1.1206(a).

16. **Comment Dates.** Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before **November 2, 1992** and reply comments on or before **November 17, 1992**. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available

for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

V. ORDERING CLAUSES

17. Accordingly, IT IS PROPOSED that, pursuant to the provision of Sections 4(f)(5), (i) and (j), 301, 303(l) and (r) and 318 of the Communications Act of 1934, as amended, 47 U.S.C. 154(f)(5) (i) and (j), 301, 303(l) and (r) and 318, Part 13 of the Commission's Rules and Regulations BE AMENDED as set forth in the Appendix below.

18. Authority for issuance of this Notice of Proposed Rule Making is contained in Sections 4(i), 4(j), 4(f)(5), 301, 303(l), 303(r) and 318.

19. IT IS FURTHER ORDERED, that a copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

20. For further information on these proceedings, contact Leonard R. Langley, Chief, Radio Operator Branch, Public Service Division, Field Operations Bureau, Room 728, 1919 M Street, N.W., Washington, D.C. 20554, (202) 632-7240, or Ana Janckson-Curtis, Attorney Advisor, Public Service Division, Field Operations Bureau, Room 728, 1919 M Street, N.W., Washington, D.C. 20554, (202) 632-7240.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Donna R. Searcy
Secretary *WR*

APPENDIX

Title 47 of the Code of Federal Regulations, Part 13, is proposed to be amended as follows:

1. The authority citation for Part 13 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. Section 13.2 (d) is amended by deleting subsection (d) in its entirety. These licenses and endorsements are no longer issued. All outstanding classes of such licenses have now expired. We are therefore removing all references to radiotelephone First, Second, Third Class Operator Licenses, and the Broadcast Endorsement.

3. Section 13.3(c)(1) is amended, paragraph (c)(2) is renumbered, and a new paragraph (c)(3) is added as follows:

§ 13.3 Holding of more than one commercial radio operator license

(c) * * * *

(1) One General Radio Operator License, one GMDSS Radio Operator License and one Restricted Radiotelephone Operator Permit; or

(2) One GMDSS Radio Operator License and one Restricted Radiotelephone Operator Permit; or

(3) One Marine Radio Operator Permit and one Restricted Radiotelephone Operator Permit.

4. Section 13.11 will be amended to include provisions regarding the new procedures to be followed in applying for a license.

§ 13.11 Application Filing Procedures

(c) Applicants for new licenses must first be examined by a Commission recognized testing entity and must receive a passing examination score from such an entity to be considered for a Commission license. Applicants must pay the required examination fee to the selected examining entity. Applicants failing an examination may reapply in accordance with the guidelines agreed upon by the Commission and the examining entity and must pay the regular examination fee.

(d) Licensees who fail to renew licenses with five-year terms before five years after expiration of the license must also be re-examined by a Commission recognized testing entity. Detailed information about application forms, examining organizations and filing procedures are contained in the bulletin "Commercial Radio Operator Licenses and Permits." This bulletin is available from the Commission's forms contractor or from the FCC, Washington, D.C. 20554.

(e) Applicants for new licenses must submit the appropriate license application fee and application forms specified by, and in accordance with Subpart G of Part 1 of this Chapter.

5. Section 13.12(b)(3) will be revised to read:

§ 13.12 (b)

(3) To satisfy the showing required in paragraph (b)(2) of this section, the applicant must submit documents signed by the ship station licensees, for example, the masters or commanding officers of U.S. ships, stating that the applicant performed the duties of a radio operator in a satisfactory manner under each of the conditions listed in paragraph (b)(2) of this section. Representatives of ship station licensees signing certifying statements must demonstrate direct knowledge of the nature of the applicant's service and the basis for concluding that the applicant has satisfied all requirements of Section 13.12(b)(2) of the Rules. Generally, only ship station officers, the master of the vessel or an officer with supervisory responsibilities over the applicant will be in a position to attest to the satisfactoriness of the applicant's service as a radio officer.

6. Section 13.21 will be revised as follows:

§ 13.21 Examination Requirement

(a) The Commission will grant licenses to qualified applicants who demonstrate knowledge of the Communications Act, Commission's Rules, and technical and operating requirements as evidenced by a passing score from a Commission-recognized testing entity. Written examinations will comprise questions from one or more of the following examination elements:

(1) Marine Radio Law and Operating Practice. Provisions of laws, treaties, regulations and radio operating procedures and practices the knowledge of which is necessary to communication by means of radiotelephone stations in the Maritime radio services.

(2) [Reserved]

* * * * *

(b) * * *

(c) Unless the Commission shall otherwise permit, an application will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) the application is defective with respect to completeness of answers to questions, informational showings, execution, or other matters of a formal character; or

(2) the application does not substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements.

(d) While an application is pending, no subsequent inconsistent, conflicting or duplicative application may be filed by an applicant.

* * * * *

7. Section 13.22 will be amended to clarify the requirement that applicants must demonstrate a satisfactory knowledge of applicable Commission rules.

§ 13.22 Required Qualifications

(a) To be qualified to hold any commercial radio operator license, an applicant must have a satisfactory knowledge of the rules and must have the ability to correctly receive and transmit spoken messages in the English language.

(b) * * * *

(6) GMDSS Radio Operator's License. Written examinations covering elements 1 and 7.

(c) * * * *

8. Sections 13.23 will be deleted.

9. Section 13.24 will be revised as follows:

§ 13.24 Passing Score

(a) Applicants for a license requiring an examination must obtain a passing score from a Commission recognized testing entity and demonstrate satisfactory evidence of same to the Commission.

10. Section 13.25 will be amended to delete all references to First and Second Class Radiotelephone Operator Licenses, and the Radiotelephone Third Class Operator Permit. Issuance of these classes of licenses was discontinued in 1981. Paragraph (b) will be amended as follows:

§ 13.25 Examination procedures.

(a) * * *

(b) The holder of a valid General Radiotelephone Operator License, GMDSS Radio Operator License, or a Marine Radio Operator Permit will not be required to take the written examination covering examination element 1 when applying for a radiotelegraph operator's certificate.

* * * * *

11. Section 13.27 is deleted.

12. Section 13.61 would be amended to indicate a change which was effected through Commission Docket No. 83-322, but which was not included in Part 13 because of an oversight. A reference to Part 23 would be added to the list of affected Parts.

§ 13.61 Need for Licensed Commercial Operators

Rules which require Commission station licensees to employ licensed commercial radio operators to perform certain transmitter operating, maintenance, or repair duties are contained in Parts 23, 73, 74, 80 and 87 of this chapter.

* * * * *

13. Section 13.74 will be amended to add a new paragraph (d) to clarify posting requirements when licensees are required to send in the original license document as part of an application process.

§ 13.74 Posting Requirements for operator licenses

(a) * * *

(b) * * *

(c) * * *

(d) A licensee who is required to submit the actual license, rather than a photocopy, as part of an application process for another Commission license, or renewal of a license, must post a photocopy of the license with a copy of the application submitted.

* * * * *

FOOTNOTES

¹ Docket 86-397 (September 24, 1986), 51 Fed. Reg. 36415

² The Commission received comments from the following organizations and individuals: American Association of Community and Junior Colleges; California Maritime Academy; County of Los Angeles; J.G. Rountree, P.E.; National Association of Business and Educational Radio; National Association of Radio and Telecommunications Engineers, Inc.; Radio Officers Union, District 3 of the National Marine Engineers Beneficial Association, AFL-CIO; Robert A. Jones, P.E.; and Society of Broadcast Engineers, Inc. The County of Los Angeles submitted the only Reply Comment filed in the docket. The majority of Commenters supported delegation of the examination functions to the private sector.

³ Pursuant to the amendment, 47 U.S.C. §154(f)(5) states the following:

(A) The Commission, for purposes of preparing and administering any examination for a commercial radio operator license or endorsement, may accept and employ the services of persons that the Commission determines to be

qualified. Any person so employed may not receive compensation for such services, but may recover from examinees such fees as the Commission permits, considering such factors as public service and cost estimates submitted by such person.

(B) The Commission may prescribe regulations to select, oversee, sanction, and dismiss any person authorized under this paragraph to be employed by the Commission.

(C) Any person who provides services under this paragraph or who provides goods in connection with such services shall not, by reason of having provided such services or goods, be considered a Federal or special government employee.

⁴ *Report and Order*, Gen. Docket 83-322, 96 FCC 2d 1123 (1984).

⁵ Section 13.2 of the Rules, 47 C.F.R. §13.2, classifies operator licenses and endorsements as follows:

(a) Commercial radio operator licenses issued by the Commission are classified in accordance with the Radio Regulations of the International Telecommunications Union.

(b) The following licenses are issued by the Commission. International classification, if different from the license name, is given in parenthesis.

(1) First Class Radiotelegraph Operator's Certificate.

(2) Second Class Radiotelegraph Operator's Certificate.

(3) Third Class Radiotelegraph Operator's Certificate (radiotelegraph operator's special certificate).

(4) General Radiotelephone Operator License (radiotelephone operator's general certificate).

(5) Marine Radio Operator Permit (radiotelephone operator's restricted certificate).

(6) Restricted Radiotelephone Operator Permit (radiotelephone operator's restricted certificate).

(7) GMDSS Radio Operator's License (general radio operator's certificate).

(c) The following license endorsements are affixed by the Commission, to provide special authorizations or restrictions. Applicable licenses are given in parenthesis.

(1) Ship Radar endorsement (First and Second Class Radiotelegraph Operator's Certificates, General Radiotelephone Operator License).

(2) Six Months Service endorsement (First and Second Class Radiotelegraph Operator's Certificates).

(3) Restrictive endorsements; relating to physical handicaps, English language or literacy waivers, or other matters (all licenses).

⁶ The GMDSS is an automated ship-to-shore distress alerting system using satellite and advanced terrestrial communications systems. GMDSS radio operators will be needed to operate this modern equipment which is to be phased in beginning in 1992 to 1999. See *Report and Order*, 7 FCC Rcd 951 (1992).

⁷ The First, Second and Third Class Radiotelegraph Operator's Certificates, and the Marine Radio Operator Permit are currently issued for five-year terms. The General Radiotelephone Operator License and Restricted Radiotelephone Operator Permit (RP) are issued for the lifetime of the licensee. 47 C.F.R. §13.4. All licenses (except the RP) require the applicant to pass a written examination. The Ship Radar Endorsement also requires an examination. The Six-Months Service Endorsement does not require an examination, but applicants must meet eligibility criteria set forth in Section 13.12(b) of the Rules.

⁸ The Commission intends to obtain approval for charging fees for the processing of the Six-Months Service Endorsement. That class of license was overlooked in the 1989 Budget Act. The Commission also expects to obtain approval to collect fees for applications for the new GMDSS radio operator license.

⁹ Section 13.12(b)(3) states in pertinent part, that:

To satisfy the showing required in paragraph (b)(2) of this section, the applicant must submit documents signed by the ship station licensees, masters or commanding officers of U.S. ships stating that the applicant performed the duties of a radio operator in a satisfactory manner under each of the conditions listed in paragraph (b)(2) of this section.

¹⁰ 47 C.F.R. §13.12(b)(3).